Pres

G. R. S. IX-5]

Previous references.

1920-21

Geol

File No. 106-18

Serial Nos. 1-4

Later references.

Pol (106-18) S-9)

(6)

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 1-4

Part B for

SUBJECT.

Calculation of royalty due by the Gold Mining Companies

7 1446-8 By 20-7-20.

To The comptroller to Govt
The Director of Mines & Geology
The Director, Dept of Geology
Copy to the Financial Secretary.

Directs that royalty on tailings referred to in Govt orders of 23-9-18 shall be 2½ %, on dividends untreated ore & requests the Director of Geology to make enquiries in regard to investments made by the Mining Companies in & outside the State out of the profits of the mining in the State, & to submit a detailed report.

WD 2233—GPB—20,000—14-6-20

(For Disposal at a Meeting)

No. C. 214

.....19.....

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

(Under Clause xii of the schedule)

Calculation of royalty due by the Gold Mining Companies.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

7th November 1919.

Chief Secretary to Government.

Extraordinary Member of Council.

First Member of Council. Seen.

214
11-11-19 Second Member of Council.

1521
7.11.19 Third Member of Council.

10/11/19

G. R.M. III—1] 1918-19

GENERAL AND REVENUE SECRETARIAT.

(Genl)

NOTES.

File No. 106-G

FILE HEADING.

calculation of royalty due by Gold mining companies

From

The Controller to Govt

No. 2935, Dated 15-4-19 Received 17-4-19

Diary No. 18497	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

Submits for consideration & orders a note on calculation of royalty due by the Gold mining companies

NOTES AND ORDERS.

Submitted with a draft requesting the Director to forward the files of papers relating to the subject for perusal.

ADS 22-4-19

Draft put up

23/4

NOTES—First Sheet.

General and Revenue Secretariat.

Geol File No. 106 of 1918-19.

Serial No.	
1	To The Director dept: of Mines & Geol (No. 374 S) 23. 4. 1919. Requests that the file of papers re the rate & mode of levy of royalty on gold produced by the Kolar Companies together with file No. 218 B of 1903-04 may be forwarded for reference at an early date. Resubmitted dtd 23-4-19 by 2 The Comptroller's notes submitted for perusal. 3 On receipt of the reference called for from the dirctg. the case will be resubmitted with opinion Second member 4 The Comptroller's note is very interesting & raises a nice question of interpretation. It seems to me that in considering it, it is necessary to have the views of both the Govt. Advr. & the Director of M & G. On receipt of these the matter may further be dealt with in the Fin Secrt. It is a mere a financial than an administrative point. Who is at fault rao. 6 Submitted for perusal.

Put up with the file in which a request of the Bulagnat Co^y for remission of royalty was considered. Rec 29/4

Govt file no 44-18 (1-4) is submitted 1.5.19

6652-8 1.5.19.

Rec 30/4/19

5 The Comptroller's note is very interesting & raises a nice question of interpretation. It seems to me that in considering it, it is necessary to have the views of both the Govt. Advr. & the Director of M & G. On receipt of these the matter may further be dealt with in the Fin Secrt. It is a mere a financial than an administrative point. Who is at fault rao.

Paul 11.5.19

6 Submitted for perusal. OK 12/5/19

7 Higher authorities (The D. of M & Geology) Rec 14.5.19

DEWAN'S OFFICE. Govt. Central Office. Recd. on MAY 13 1919 Reg. No. 7111.

19596

G. R. S. III-2.

General and Revenue Secretariat.

Geol File No. 106 of 1918-19

Serial No. 3.

From the Director, Geological Survey
No. 3249 dt 2-5-19.

Forwards his file of papers re his note on mode of levying royalty on gold produced by the Kolar companies & his office file no 2182 of 1903-04 for reference.

Submitted.

Asst. 12-5-19.

[illegible] papers have [illegible] Council [illegible] No 18494 [illegible]

NOTE—Contn. sheet.

. R. S. III-2]

3357 1849
5-5-1919

General and Revenue Secretariat.

Geol File No. 106 of 191 8-19

Serial No.

910 No. 132
15.5.19.

Geol Office file 1105

218/B of 1903-04

218/B 03 Dep recd with D.O. letter no 3249 dated 2.5.19
To be returned to transmitter with this file for reference here & return when done with

8 Forwarded with Compliments and Papers to the Director Dept of Mines & Geology for favour with the minimals, notes file for reference remarks.

B.O. for Venkatarama Iyengar
for Chief Secy
14/5/19.

Secy
15-5-19

9 Returned with Compts. to the Chief Secretary with an unofficial note dated 7.7.19.

8.7.19

Submitted

15-7-19

12-7-19

Cell

1191

NOTE—Contn. sheet.

Note.

The Comptroller opens his discussion of this subject by referring to G.O. No.G.6087-92- G.M.387-14-18, dated 23rd September 1918, in which part of the royalty to be paid on tailings removed from Sonnakuppam Tank is stated to be "2½ on the profits or dividends".

The Comptroller points out that the order apparently assumes that Profits and Dividends are practically equivalent terms. He points out that this is not the case and asks that the matter should be cleared up.

The statement, in the Government Order referred to, that part of the royalty should be "2½ % on the Profits or Dividends" is due, I presume, to an error in drafting or failure to appreciate the distinction between 'dividends' & 'profits'.

When the matter was under discussion I pointed out that for practical reasons it was necessary to make the royalty payable on the gold derivable from these tailings identical with the royalty payable on other gold obtained by the Company which undertook the treatment of the tailings. This is due to the fact that the gold from the tailings would join up with gold obtained from the mine in the general treatment plant and that it would be impossible to keep any separate tally of the gold from the tank either as regards the actual amounts recovered or the costs of recovery. To attempt to assess the profits on this work is practically out of the question and the only feasible procedure is to allow the gold to merge into the amounts recovered by the Company from their tailings plant and to charge the same royalty as is leviable under the Company's leases Viz., 5 % of the gold plus 2½ of the dividends

of the Company.

The Comptroller then enters into a lengthy and interesting discussion of the distinction between dividends and profits and raises the question of the interpretation of Clause 9 of the existing Kolar Leases which provides for the payment of part of the royalty in the form of 2½ % of the dividends as and when declared and made payable to the shareholders. If there were any doubt about the interpretation of Clause 9 of the Leases it should be referred to the Government Advocate for opinion as a decision, in case of difference of opinion, would ultimately rest on legal opinion.

The Comptroller however goes further than this and seeks to decide what the Companies shall or shall not declare as dividends. We have no power to influence this decision, except by mutual agreement with the Companies, and the various arguments and suggestions put forward by the Comptroller cannot carry much weight now however useful they might have been before the signing of the Memorandum of Agreement.

As a matter of fact the question of obtaining some increased royalty from the Kolar Companies and of altering the basis of computation was under discussion for many years before the termination of the original leases. Many schemes were discussed several of which involved a share of profits and in some the share depended on the relative proportions of profits to capital. Most of these schemes were found to present defects and difficulties of application.

After several years of discussion the Memorandum of Agreement of 1901 was sprung upon this Department at a moment's notice. I find from the Files that Sir Mark Napier offered a royalty of 1 % of the dividends in addition to 5 % of gross value. He subsequently increased this to 2 % of Dividends.

The

19

The matter was considered in Council and it was decided that an additionnal Royalty of 2½ % of dividends might be accepted.

The first intimation I had of these terms was at the meeting at the Residency on the 21st December 1901 when Sir Mark Napier produced a Memo of Agreement in which he offered 2 % of dividends. Sir Krishna Murti asked that this might be increased to 2½ % and this was agreed to on the spot and the Memorandum signed.

There was no discussion as to the interpretation of the term "dividends" and it was obviously intended that in regard to the extra royalty Government should simply share to the extent of 2½ % in the dividends distributed to shareholders and the amount so distributed is a matter solely within the control of the shareholders themselves.

I do not see that under these circumstances we can have any say in the matter. The Comptroller raises the point that considerable items of revenue are used for the working of the mines instead of being distributed as dividends and raises objection to such use. His point appears to be that such sums are really spent on capital account and that they should not be obtained from revenue but by means of issue of fresh capital.

I do not think that this view is necessary or sound. Subscribed capital is necessary at the start of a mine for purchase of property, equipment, development &c. before the revenue producing stage. When the revenue producing stage is reached further expenditure on equipment and development may properly be derived from revenue instead of by fresh capital issues. It is a matter for the shareholders to decide. As a matter of fact the raising of fresh capital for the mines would have been a matter of great difficulty for many years past and the shareholders have practically been forced to

spend

spend large sums from revenue for necessary developments instead of putting them in their pockets as dividends.

It is true that these sums have, as a matter of accountancy, been allotted to capital expenditure but it is difficult to see where the line should be drawn or why these sums should be regarded as profit when they are expended on working and developing the mine.

For instance expenditure on driving levels, cross-cuts and winzes are ordinarily charged against revenue as working expenses. There is no reason that I know of why the sinking of a main shaft, which is necessary for mining the ores, should not also be provided out of revenue or why the shareholders should first be compelled to declare the money as profits or dividends and then spend it on the working of the mine.

It may be convenient to place the money expended on a main shaft to capital account and gradually write it off instead of charging it against the working expenses of any particular year or years. This is a matter of administrative convenience and accountancy, but I am unable to see that money spent in this way can be regarded as profit to the shareholders.

Again, the Comptroller states that Government should not be compelled to contribute indirectly to the winning of the gold, but that the whole expense of winning the gold and working the mine should be borne by the lessees and that the royalty should be chargeable on the gross revenue without any deductions on account of working expenses.

There

There appears to be some confusion here. A royalty calculated as a percentage of the gross output may properly exclude any deductions on account of working expenses, but the same stipulation cannot possibly apply to a royalty based on a share of the profits.

7. The profit to be shared necessarily involves the deduction of expenditure before the profits accrue and it would be a contradiction in terms to stipulate for a share of profits without any deductions on account of working expenditure.

8. On the whole, I do not see that any material or moral case has been made out for interfering with the terms of the leases which are, I think, perfectly clear and explicit. The various defects and disadvantages pointed out by the Comptroller should have been considered before the Memorandum of December 1901 was signed. I think it is too late now.

9. There is one very anomalous point on which we might perhaps reach some decision in consultation with Messrs. John Taylor & Sons. A Kolar company may put a proportion of its profits into a mine in British India or elsewhere outside Mysore.

10. If the other mine pays dividends the Kolar Company gets its share which goes to increase the dividends of the Kolar Company and we would get our 2½ % share of this.

11. But let us take an extreme case. The Kolar Company uses a considerable part of its profits to acquire and equip a property outside of Mysore. For many years the outside property may make no profit. In the meantime let us suppose our lease to the Kolar Company expires and is not renewed - the mine being finished with and abandonned.

12. In this case what becomes of the moneys placed by the Kolar Company out of Kolar profits, in the new venture. A 2½% share of that money belongs properly to the Mysore Government

and

6 to be printed

22

and we are entitled to 2½ % on the dividends accruing therefrom so long as the Kolar Lease is current. What happens in the event of the termination of the Kolar Lease ? As things stand at present we should have no further claim to our share of dividends.

13. This is an interesting point and one which has not been contemplated hitherto by Lessors or Lessees and we might very fairly open the question with Messrs. John Taylor & Sons and endeavour to arrive at some satisfactory understanding in the matter.

7th July 1919.

Director,
Dept.of Mines & Geology.

W. F Smeath.

G. R. S. III-2.

General and Revenue Secretariat.

Gen[l] File No. 106 of 1918-19

Serial No.

11 The question raised by the Comptroller is whether the 2½% extra Royalty under Clause 9 of the leases with the Kolar Gold Mines should be calculated on the actual profit or on the portion of it which is declared a dividend

12 He thinks that it should be calculated on the actual profit i.e. the excess of the proceeds over the exp[e] during the year and not on the portion which may be given as dividend to the shareholders after such exp[e] on capital works &c as the Companies may choose to meet from it have been deducted from it.

13 His argument briefly is as follows:

(1) In this case the exact words of the lease should not be literally interpreted. They should be examined in the light of the negotiations and considerations of fairness to the lessee.

(2) As to the negotiations:

(a) Mr Le Blanchant who first proposed this extra Royalty uses words that show that dividend was not intended to be different from profits.

(b) Nowhere in Mr Napier's proposal is there any reference to a horrible

NOTE—Contn. sheet

diversion of profits to capital a/c. There is on the other hand a desire to avoid arrangements that might give rise to unfair practices which would deprive Government of the share of the profit intended for it and might create misunderstanding.

(c) Mr Napier also accepted the principles of Mr de Marchant and therefore accepted the principle mentioned in sub-para (a) above that profit and dividend should be the same amount.

(d) The question of ~~dividends declared~~ any portion of the profit which might not be declared a dividend but invested in other ventures being brought under levy was raised in 1909 and the Companies agreed that such portion might be brought under levy. The question of any portion being spent on capital works on the mines themselves was raised in the office note but not mooted with the Companies. It was however made clear to them that

General and Revenue Secretariat.

Gen'l File No. 106 of 191 6. 7

Serial No.

that Govt expected there would not be much difference between the two. The difference now is found to be heavy; hence the words should be liberally interpreted

(3) As to the considerations of fairness:

(a) Govt are entitled to certain ~~re~~royalties for allowing the mines to be worked; and to ~~get~~ some of the ~~profit~~ as capital and diminish the royalti is unfair to Govt

(b) It may be argued that the investment in such a case develops the mine itself and brings profit to the lessor. The lessor is entitled a share of the amount invested & not to the proceeds therefrom only.

(c) The mining industry being one which permanently removes the wealth of the country, the State should have the largest profit possible out of it & not be compelled to save the shareholders the trouble of raising capital & lose its revenue

(d) Diversion of profit for capital

NOTE—Contn. sheet.

General and Revenue Secretariat.

File No. 106 of 191 ;

Serial No.

expenditure after some finally removes the amount diverted from contribution unlike the portion that might be invested elsewhere. If part of the money thus spent is spent in the purchase of ~~property~~ machinery &c Govt would in purchasing the property of lessees at the termination of the leases have to pay the whole price of property for purchasing which they have already thus indirectly contributed a part.

(e) Diversion of profits for capital expenditure without showing the profit in the accts as used for increasing the assets is bad accounts & cannot be allowed & adversely affect the interests of the Govt.

(f) There is no definition of "dividends as and when declared" and the companies cannot be permitted to decide all by themselves what this shall be, to the detriment of Govt.

PP 5-10

NOTE—Contn. sheet.

14 In the note above Dr Smeeth

examines these arguments generally and comes to the conclusion that "no material or moral case has been made out for interfering with the terms of the leases which are perfectly clear and explicit."

15 On the whole this seems to be the only view that can be taken of the matter. To examine the argument of the Comptroller in detail:—

The paras that paras below are numbered similarly to those of the above summary of the Comptroller's argument for convenience of reference.

(1) Once a contract is reduced to certain definite terms as the result of negotiations and all considerations of fairness to the lessor no less than to the lessee, it ceases to be subject to variations. The terms of not clear would have to be interpreted but where they are clear and definite there is no justification for either party going back on the terms of the contract to the negotiations or to terms fair to itself. In this case "dividends as and when declared" is perfectly clear and explicit and Govt can no more quarrel with the as and when declared" than the Company can quarrel with the "2½ %."

(2) Even admitting that the negotia

can at this stage be referred to for a meaning of the words though this latter is quite clear

(a) Mr Le Marchant must have used the words with the usual meaning and they are always taken to mean two different things. "Profits" is sometimes loosely used for "dividends" but "dividends" has a clear & definite meaning.

In lieu of "dividends" having been used to mean "profits" it is more probable that "profits" was used to mean "dividends".

(b) Mr Napier used the words "dividends as and when declared" and he must have used them deliberately and with the meaning that would be attached to them fairly. He wanted to define the amount on which the extra royalty should be calculated and not the purpose for which the profit/not declared a dividend would be put. He certainly wishes to avoid misunderstanding and that apparently is why he used the phrase "as and when declared."

(c) Mr Napier broadly accepts the principles of Mr Le Marchant But in the same para of the same letter referred to by the Comptroller said he could not

"consent to be bound by the recommendations it contains" Obviously the company cannot be asked to accept the inferential meaning of "dividends" suggested by the Comptroller in para 4 of his note.

(d) The question was partially raised in 1909 but not mooted with the companies. There is no record of the question having been mooted with the companies but the companies may well say that it is now too late to moot it. It would also appear from the note of Dr. Smeeth referred to the Comptroller that Govt accepted the words as they were and with the meaning that would ordinarily be attached to them (Vide para 27 of the note. The revised clause 9 is proposed after this discussion on this point and the whole thing was apparently discussed at an interview (Vide marginal remarks) and finally agreed upon in person. Dr Smeeth does not ca

Serial No.

whether the question of diverting profits for capital exp^{t} was raised at the interview. It is possible he may remember something. At any rate the fact that after full discussion a certain form of the clause was agreed upon and that no proposal was made to the Company to bring all the profits under contribution is a factor all in their favour.

(3) Coming now to the considerations or fairness urged by the Comptroller

(a) The argument that the royalty is for allowing the Company to work the mines is met in the second part of para 16 of Dr Sheatts note.

(b) and (c). There is much force in their arguments that the Govt is entitled to a share of the profits in any case and not merely when part of has been spent as capital in the mines Dr Sheatts remark in para 16 seems however to cover this argument also.

(d) The Comptroller's arguments in paras 13 & 14 of his note are strong arguments in favour of Govt.

(e) The object [illegible]

Serial No.

diversion on account principle is one for discussion with the Comp. They are however not likely to ~~object~~ allow any interference with what they would urge is a detail. The argument hitherto would be of no avail.

(f) The phrase "dividends as and when declared" is, as stated by Dr. Smeeth perfectly clear and explicit. "Declared" shall mean "declared by such person or body of persons as usually declare dividends in all such companies; and this body is always the company itself in the absence of special provision. and never any less or other body whom they might have dealings or in consultation with such body.

16 In any case urging considerations of fairness is not likely to be of use when the terms have been clearly & definitely agreed upon and the question of interpretation cannot arise where the words are as clear to be as in this case. If the point is raised stress will have to be laid on points 2(d) and 3 (c) and (d) of the Comptroller's Reference as summarised above.

NOTE—Contn. sheet

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1906

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G. R. S. III-2.

General and Revenue Secretariat.

File No. of 191 .

Serial No.

Mr Smeeth incidentally raises the question of dividends from ventures dovetailed with the KGF profits being brought under contribution "from whatever source derived" in the leases is a wide enough phrase and when the KGF Comp[y] in question abandons the mine it would wind up or not wind up. If it winds up it would distribute its invested profits & Govt would come in for a share. If it does not Govt would get a share as usual The Companies cannot object to this suggestion the matter may however be discussed with them and settled now

For orders

Chief Secy) 19/8

The Govt: advocate must also be consulted.

1124-289
13.8.19

1st member 12/8/19

Yes. This last letter be done now

Paul

NOTE—Quote this sheet.

No. 35
16/8/19

To Forwarded with compliments by the Govt Advocate for favour of remarks
15/8/19 Bro: Subbaratna Iyengar
for Chief Secy to Govt

9425
G.R.T. 24 | 19-20

GEN. & REV. SECT.
Ch Sec'y
29 SEP 1919

[21] The Comptroller has attempted to make out a very strong case against the Gold Mining Companies regarding the practice latterly adopted by them in setting aside a large share of the profits as "Capital expenditure", "Contributions to Reserved and other funds" and "Donations" and thereby depriving Government of their right to levy 2½% as Royalty on this very considerable portion of the the annual profits of the Companies. The magnitude of the financial interests involved is indeed very large.

22 The most important argument raised by him is that a specific reference had been made by Dr. Smeeth in para 10 of his letter to Messrs. John Taylor & Sons as to what was actually intended by the Government by the expressions "Profit" and "Dividend" and that the wording finally adopted in the leases of 1910 was to some extent based on this supposition that the expression "Dividend" was understood as almost synonymous with "Profits". The paragraph referred to by him is as follows:-

"It was unquestionably the intention * * * * * * material".

23 It is not very clear if the Company consented to accept this interpretation and we cannot, therefore, make any use of the paragraph referred

referred to above in the absence of any communication from the Companies accepting this view.

24 As, after all this correspondence, a certain wording has been finally adopted we are bound by such clear and unambiguous expressions. The fundamental principle regarding construction is:- "In construing Wills and indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to". Even in Legislative Enactments when the language is capable of only one meaning by the use of clear and unequivocal language it is a well established principle that it must be enforced "even though it be absurd or mischievous". It is only in cases where the language is latently ambiguous or susceptible of various meanings or shades of meaning, that extrinsic evidence of the preceding circumstances or surrounding facts under which the contract was made. so far as they throw light on the matter to which the document relates is admissible. The previous correspondence on this subject, cannot, therefore, be of much use to us in the interpretation of the expressions adopted in the leases.

25 The words "Profit" and "Dividend" have each of them a special significance and they cannot, in any sense, be considered to be synonymous.

26 The profits of a business "are the credit balance of a profit and loss account properly prepared, having regard to the definition of - business in the Memorandum of Articles of Association, and are generally the excess of - revenue receipts over expenses properly chargeable to revenue account".

27 A "Dividend" is etymologically the "dividendum", the total divisible sum. But in its ordinary accepted sense "it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient", viz., the shareholder.

28 Though Dividends have always to be paid out of profits and cannot be paid out of the capital, a company is not bound to divide the whole of its ~~xxxxxx~~ profits amongst its shareholders. How much of the profits is to be divided and how much of it is to be set apart as reserve or for being added on to the capital are all questions of the internal management and are therefor absolutely within the discretion of the shareholders and even the Court has no jurisdiction to - control or review their decision, except in so far as it is at variance or inconsistent with th Articles of Association.

29 In the present case, therefore, the Mining Companies

Companies are quite at liberty, subject of course, to the limitations put upon their decision by their Articles of Association, to declare only so much as dividend as they consider necessary and to set apart the balance for other purposes, and we are bound under the clear terms of the agreement, by their decision.

30 There is no doubt that there was a good deal previous of correspondence on this subject, before the Leases were formally executed, all aspects of the question were considered and that the expressions used were deliberately adopted. Even the single word "Dividends", as distinguished from "Profits" without any of the qualifying expressions have been quite sufficient to determine what was actually intended to be conveyed thereby. But in the present case, we have a very distinct clause which clearly and forcibly lays down what is intended. The clause in question runs thus:-

"and also yielding and paying a Royalty of 2½ -
"per centum upon the amounts of all Dividends from
"whatever source derived as and when declared and
"made payable by the lessees to their share-holders'

31 The use of such clear and explicit wordings is quite inconsistent with the assumption that we were either misled, or that we were under a misapprehension as to what was actually meant.

The

G. R. S. III-2]

General and Revenue Secretariat.

1958
27 18494 19066

File No. 1-1 of 191

Serial No.

5.

3 The Leases have, besides, been acted upon - for a pretty long time and from a strictly legal standpoint, I am of opinion that we have no good grounds to question the action of the Companies - in this matter.

3a But I quite admit that the arguments advanced by the Comptroller are perfectly sound and there is no doubt that we are losing very much on account of the fact that the words "Dividend as and when declared" etc., were used instead of the word -- "Profits". I believe the latter expression was - intended to be used, but apparently, on account of the mistaken impression that there was practically very little difference between the two expressions, the word "Dividend" must have been ~~xxxxx~~ put in.

Equity is surely on our side though, unfortunately Law is against us. The legal position need not, however, I venture to suggest, stand in the - way of our pointing out to the Companies, how the matter stands and how we are losing considerably in the manner stated by the Comptroller.

26th Sept. 1919.

Government Advocate.

34 Refer Paras 15 and 17 of the Note

35 1st Member

P.T.O.

G. R. S. III-2,

19586
18494

General and Revenue Secretariat.

File No. 1 P 6 of 191 . 19

Serial No.

2659-81
30.10.19.

[redacted].

36 I am inclined to agree with the G.A. in the view taken by him. Post. if the Hon. approves the file may be circulated and discussed at a meeting of the Council in due course.

Asst
24.10.19
Sec
25-10.19

DEVAN'S OFFICE.
Rcd. on OCT 27 1919
No. 2660

Dewan
37 Yes
Sec
4.11.19

CS.
circulate
CSM
5/11
Sec
5/11

38 I agree with the view taken by the Govt advocate which is in the same as that Engrossment by the Attorney in his note on the file. We have whether rightly or wrongly agreed to reserve 2½% royalty on "dividends as & when so declared"; the meaning of the words is clear & admits of no doubt; and as ~~Cambay~~ cannot legally lay any claim to the payment of royalty on his person & property

NOTE—Contn. sh

Serial No.

whether for this purpose the dividend
39 I do not know if any
purpose will be served by putting only to the
Company, his opinion of the Advocate-
shares also of his profits
are whether towards dividend. The reply
of the Company will probably be based
on the letter of the Comptroller in para 7 of this note.
The basis of dividends was
with a view to avoid discussion
difficulty in the exact determination
of profit, and in consideration that
year by year differences between the
profits & dividend would be
very material": and that it should therefore
be adhered to

10/11/19

NOTE—Contn. sheet

C. 2111

40

Extract from the Proceedings of the 51st *Meeting of the Council of His Highness the Maharaja, held at Bangalore on the* 20th November 1919

5. Subject. - Clause xii of the schedule.

Calculation of royalty due by the Gold Mining Companies.

Opinion of the Council.

In regard to the royalty on tailings referred to in the Government Order of September 1918, the royalty may be 2½% on dividends instead of profits.

Further enquiry may be made in regard to investments out of profits of the Mining Companies on other concerns in and outside the State.

No further action can be taken at present on the other points raised in the Comptroller's note, in the face of the terms of the leases and the course of conduct pursued till now.

(Signed) M. Kantaraj Urs,
Dewan of Mysore.

"EXTRACT

C S Balasundaram

Chief Secretary to Government.

WD 1148—GPB—1,000-

AD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat.

File No. of 191

(29)

Serial No.

41 To the Asst Secretary, Branch IV Judicial Dept.

for kindly submitting the file to the First Member of Council with a draft Final Note.

Mr S. Please bring up tomorrow.
21/11

DTR subject to approval
First Member). 29-11-19

D. D. A. approved
13.12.19.

D. S. N. submitted

Dewan)

DEWAN'S OFFICE.
Recd. DEC 22 1919
Reg. No. 4263

NOTE—Contn. sheet.

Final Note by the First Member of Council.

28

Subject:--

Calculation of the royalty payable by the Mining Companies on the Kolar Gold Fields.

The Mining Companies on the Kolar Gold Fields pay to Government, at present, under clauses 7 to 9 of their respective leases as renewed in 1910, the following royalty:-

(1) " A royalty of 5 per cent upon the net sale proceeds of all gold metallic ores, coal and other substances of a saleable or merchantable nature found on the mining block which shall have been crushed, dressed and made merchantable by the lessees ".

(2) " A royalty of two and one-half per cent upon the amount of all dividends from whatever source derived, as and when declared, and made payable by the lessees to their shareholders. "

(3) " A royalty of 10 per cent upon the saleable value of all precious stones found on the mining block ".

This rate of royalty was agreed upon in the year 1901, after considerable discussion of certain suggestions made to Mr. Le Marchant of the India Office, and prolonged negotiations between Sir P.N. Krishna Murti, the then Dewan, and Sir M. Napier-representing the companies-and recorded in a memorandum of agreement dated the 21st December 1901. The papers relating to this agreement are put up. In issuing orders, with the approval of His Highness, regarding the removal, by two of these companies, of the gold tailings in the Sunnakappam Tank, in Government Order No. G. 6087-92/G.M. 387-14-18 dated, 23rd September 1918, the royalty was fixed as:-

(1) 5 per cent on the value of the gold obtained.

(2) 2½ per cent on profits, or dividends, corresponding to the rates in clauses (1) and (2) above.

2. In a note forwarded with his letter No. Bk. 2935 dated 15th April 1919, Mr. M.N. Krishna Rao, then Comptroller, raised the

the question of the basis on which the royalty of 2½ per cent in clause (2) of both the above provisions should be calculated.

With regard to the phrase " profits or dividends " occurring in the second case, he observed that apparently the two terms were assumed to mean the same thing, but that in fact, they did not, and that the Oorgaum and the Nundidroog Gold Mining Companies appropriated a part of their "profits" for purpose of capital expenditure and permitted only a part of their profits to be declared as " dividends. He, therefore, desired that it should be made clear whether this 2½% royalty was to be calculated on the profits or on the dividends.

With regard to the corresponding clause in the first case, i.e., under the leases, he reported that, from the accounts of the companies, large amounts out of the Profit and Loss Accounts seem to be written off for capital expenditure on buildings, machinery and plant, and that, by the calculation, as at present made, on the dividends instead of on the profits, Government were losing a considerable amount every year, the total loss so far being calculated at 18 lakhs; and urged for the consideration of Government certain grounds for thinking that the basis should be in the case of the leases also the " profits " and not the dividends.

These grounds are stated in detail in paragraphs 3 to 16 of his note and a brief summary of them is found on pages 11 to 14 of the notes in the file. Some of these arguments are based on an interpretation of the wording of the leases in the light of the negotiations and some on what the Comptroller characterises as " consideration of fairness to the Government ".

3. The Comptroller's note was sent to Dr. Smeeth for remarks and then to the Government Advocate. The views of the former are found on pages 5 to 10 of the notes in the file and of the latter on pages 21 to 25.

In regard to the Comptroller's statement that the wording of the leases should be interpreted in the light of the negotiations which preceded the adoption of the form of lease, Dr. Smeeth is of opinion that the words used in the leases are perfectly clear and

and explicit and that there is no need to go to the record of previous negotiations for interpreting them. And the arguments based on " considerations of fairness to the lessors ", he thinks, cannot carry much weight now, however useful they might have been before the signing of the memorandum of Agreement of 1901. The Government Advocate, while agreeing that the arguments are sound and that the negotiations seem to show that the word intended to be used was " profits " and that " dividends " seems to have been used under the impression that the two would come to the same thing, is also of the opinion that the words of the leases are so clear and explicit that there is no need to go to the negotiations for their meaning and that we cannot urge either that we were misled or were under a misapprehension and resort to arguments based on considerations of fairness. He is, however, of opinion, apart from the legal aspects of the case, that the matter may be moved with the companies.

4. In discussing the Comptroller's note, Dr. Smeeth has raised a further question of the royalty due to Government on the profits of the Mining Companies from any investment in or outside the State out of the profits of the mines in the State. (Vide, paragraphs 19 to 23 of Dr. Smeeth's note).

5. There are thus three points for consideration in the case:-

(1) Whether the 2½ per cent royalty in the case of the tailings should be on the profits or the dividends;

(2) whether the question of the royalty on profits derived from investments outside the State may be raised with the companies;

(3) whether the question of the loss caused to Government by the companies spending part of their profits for capital expenditure may be raised with them.

6. The matter was considered in Council on the 20th November 1919, and they were of the following opinion:-

(1) In regard to the royalty on tailings referred to in the Government Order of September 1918 the royalty may be 2½ per cent on dividends instead of profits.

to be prepared

33

31

profits.

(2) Further enquiry may be made in regard to investments out of profits of the Mining Companies on other concerns, both in and outside the State.

(3) No further action can be taken at present on the other points raised in the Comptroller's note, in the face of the terms of the leases and the course of conduct pursued till now.

7. The resolution of the Council may be graciously approved. Further action as in Clause (2) of the resolution will be taken after approval of His Highness.

P Rajeshwara Rao
20.12.19

FIRST MEMBER OF COUNCIL.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council on the subject of* calculation of the royalty payable by the Mining Companies on the Kolar Gold Fields, *for His Highness' gracious approval.*

Dewan.

23rd Dec 1919

c 261

35

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

C. 11
23.12.19.

Calculation of the Royalty payable by the Mining Companies of the Kolar Gold Fields.

960.

Order.

~~KRW~~
10/3/20

H-L
11.3.20

G. R. S. III-2].

General and Revenue Secretariat. | Genl File No. 36

Serial No.

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at headquarters and then sent to the Secretariat concerned for the issue of orders.

50 Circulated to the Members of Council for perusal of His Highness' orders $\frac{\text{before}}{\text{after}}$ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

C S Balasundaram
Chief Secretary to Govt.

Through the Secretary to Government,

.....Department.

547 10/3/20.

51 FIRST MEMBER OF COUNCIL 11/3.3

8922-306 T.R. 13-3-1920

52 SECOND MEMBER OF COUNCIL 8/3 Rec 15.3.20

MINOR Depts: 28 JUN 1920

4986 16.3.20.

53 THIRD MEMBER OF COUNCIL

NOTE—Contn. sheet.

54 Final secy comments in pencil (Interim).

M 3096-29

G. R. S. III-21

General and Revenue Secretariat.

Geol File No. 106 of 1918-19

Serial No.

6

Submitted with a draft order

ATH 3-7-20. 5 Please put up a revised draft as per instructions. DCS 7/7/20.

8

Submitted with a revised draft as directed.

ATH 10-7-20. 9 May be approved.

Chief Secy. DCS 12/7/20.

Issue

GBJ 15/7/20

10 —

4 To, The Comptroller to Govt.

" Director of Mines & Geology

" Director. Dept of Geology (with records)

Copy to the financial Secty.

G. 1446 — 8 Record. dt 20/7/.

Directs that the royalty on tailings shall be 2½% on dividends instead of on profits ~~thereon~~ and approves the proposal of ~~the~~ Sweets regarding the levy of royalty on profits realised by Mining Companies in Mysore from investments made by them, out of the profits of the mines in the State, and requests the Director, Dept. of Geology to make enquiries in regard to such investments & submit a detailed report early and that no further action is called for at present in regard to other points raised in the Comptroller's letter.

15

NOTE—Contn. sheet.

D.O. Fr. 0938
21.4.19.

D.O.No. 30

Office of the Comptroller,

Bangalore, 19th April 1919.

19060

Dear Sir,

With my official letter No.Bk.2935 dated 11th April 1919 I have submitted to Government a note on the calculation of royal due by the Gold Mining Companies. The point raised in the note appears to me to be important as the amount involved is large - about 18 lakhs - and I have therefore thought it well to report the matter to you through this letter.

2. Briefly the case is this. The companies have to pay royalty at 2½ per cent on "all dividends from whatever source derived as and when declared and made payable by the lessees to their shareholders." When the terms of lease were under consideration, we told the Companies as follows:-

"It is unquestionably the intention that royalty should be 2½ per cent of the profits. But to avoid discussion and difficulty in the exact determination of profits, the basis of dividends instead is adopted, it being considered that the difference between the two would not be material." This view of the condition of the lease was not questioned by the Companies. They are, however, diverting a large share of the annual profits for developing the mines, for forming reserve funds and for making donations, and allowing us royalty only on the amount actually paid to the shareholders as dividends. The question is whether this action of the Companies is right.

3. As I have stated in the preceding para, we told the Companies that dividends were made the basis of calculation of royalty on the distinct understanding that the difference between dividends and profits would not be material. As a matter of fact however, the difference is large and I have given figures in my

note

note to show the shares of profits utilised for other purposes, on which the Companies do not give us royalty. It seems to me that the interpretation of the clause in the Lease relating to the calculation of royalty on dividends communicated by us and accepted by the Companies has been overlooked and the result is that we are being deprived of the royalty which it was the intention of the Lease that we should get.

4. Many arguments may be advanced to support our contention and I have discussed the question in all its aspects in my note.

Yours sincerely,

M N Venkatarama Rao

A.R. Banerji, Esq., M.A., I.C.S., C.I.E.,
Dewan of Mysore, Bangalore.

D.O.No.

Office of the Comptroller,

Bangalore, 19th April 1919.

Dear Sir,

With my official letter No.[illegible].2055 dated 11th April 1919 I have submitted to Government a note on the calculation of royalty due by the Gold Mining Companies. The point raised in the note appears to me to be important as the amount involved is large - about 13 lakhs - and I have therefore thought it well to report the matter to you through this letter.

2. Briefly, the case is this. The companies have to pay royalty at 9% per cent on "all dividends from whatever source derived as and when declared and made payable by the lessees to their shareholders." When the terms of lease were under consideration, we told the Companies as follows:-

"It is unquestionably the intention that royalty should be 9% per cent of the profits. But to avoid discussion and difficulty in the exact determination of profits, the basis of dividends instead is adopted, it being considered that the difference between the two would not be material." This view of the condition of the lease was not questioned by the Companies. They are, however, diverting a large share of the annual profits for developing the mines, for forming reserve funds and for making donations, and allowing us royalty only on the amount actually paid to the shareholders as dividends. The question is whether this action of the Companies is right.

3. As I have stated in the preceding para, we told the Companies that dividends were made the basis of calculation of royalty on the distinct understanding that the difference between dividends and profits would not be material. As a matter of fact however, the difference is large and I have given figures in my

note

note to show the shares of profits utilised for other purposes, on which the Companies do not give us royalty. It seems to me that the interpretation of the clause in the Lease relating to the calculation of royalty on dividends communicated by us and accepted by the Companies has been overlooked and the result is that we are being deprived of the royalty which it was the intention of the Lease that we should get.

4. Many arguments may be advanced to support our contention and I have discussed the question in all its aspects in my note.

Yours sincerely,

M N Lakshmana Rao

P. Raghavendra Rao, Esq., B.A., B.L.,
Member of Council, B a n g a l o r e.

Please address all future communications to the Comptroller to the Govt. of H.H. the Maharaja of Mysore.
In reply to this Comn. please refer to

No. Bk.2935. 2/2

OFFICE OF THE COMPTROLLER TO THE
GOVERNMENT OF HIS HIGHNESS THE MAHARAJA
OF MYSORE.

Dated, Bangalore, the 11th April 1919.

FROM

M. N. KRISHNA RAO, ESQ., B.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore.

To

C. S. Balasundaram Iyer, ESQ., B.A.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

I have the honor to submit herewith for the consideration and orders of Government a Note on calculation of royalty due by the Gold Mining Companies under Government Order No. G.6087-92/G.M.387-14-18 dated 23rd September 1918 and clause 9 of the Lease sanctioned in Government Order No.1724-6 dated 5th February 1910.

I have the honor to be,

Sir,

Your most obedient servant,

M N Krishna Rao
Comptroller.

SAE.

In their Proceedings No.G.6087-92/GM 387--14-18 dated 23rd September 1918, Government have ordered that the Ooregaum and Nundidurg Gold Mining Companies might be permitted to remove the tailings in the Sonnakuppam tank on certain conditions one of which is the payment of 2½ per cent on "Profits or dividends." It has apparently been assumed that all the profits are distributed as dividends and that there is no difference between profits and dividends. This, however, is not the fact. The Ooregaum and the Nundidurg Gold Mining Companies appropriate a part of their profits for purposes of capital expenditure and permit only a share of the profits to be declared as dividends among their shareholders. Whether it is the intention of Government that 2½% should be paid on the entire profits or only on the part of the profits declared as dividends is not clear from the order. It is necessary to clear up this doubt to enable the Department of Geology and this office to see that the amount which, it is the intention of Govern ment should be paid by the Companies, is actually recovered from them.

Profits or dividends referred to in G.O. dated 23-9-18 requires to be defined.

to be printed

2. I have been considering for some time past a cognate question relating to the payment, under the terms of their leases by the several Gold Mining Companies of royalty calculated on dividends. While going through the Reports and Accounts of the Companies for the year ended 31st December 1917, I noticed large amounts ~~writ~~

A question regarding Royalty of 2½% on dividends under present leases raised.

written off the Profit and Loss Accounts on account of Capital Expenditure on buildings machinery, plant &c. This led me to enquire if the royalty payable to Government on dividends took into account the share of profits appropriated for capital expenditure or excluded such share and if it excluded such share, if the procedure was warranted by the terms of the Lease or was reasonable on general conditions of fairness to the interests of the proprietor of the mines. I report in this note for such action as Government may consider necessary the present position in this respect and what I consider is the equitable course that should be followed.

Present method of calculation and the relevant clause of Agreement.

3. The Companies calculate the royalty on dividends, on the actual amount of dividends distributed among the shareholders. The relevant clause (No.9) in the Lease runs as follows:-

"And also yielding and paying a royalty of two and one half per centum upon the amounts of all dividends from whatever source derived as and when declared and made payable by the lessees to their shareholders."

Question too important to be decided on a literal interpretation of the clause.

A literal interpretation of the underlined part of the ~~condition~~ clause apparently supports the method of calculation adopted by the Companies. The question is, however, a very important one and the magnitude of the financial interest involved is also large and it cannot, I think, be dismissed on a literal interpretation of the clause.

We have to consider whether this condition in the Lease contemplated the diversion of a share of the profits for any purpose other than that of declaring dividends and the payment of royalty only on a share of profits and not on the whole of what is available for distribution as dividends. We have also to consider whether it is fair to deprive the proprietor of a mine of his share of royalty on profits, if the shareholders choose to forego a share of profits in the shape of dividends. The question is I consider one to be examined in the light of the negotiations that led to the conditions of the Lease sanctioned in 1910 and also of general considerations of fairness to the interests of the Lessor.

Recommendation of Mr. F.C. Le Marchant.

4. The idea of an extra royalty on dividends in addition to that upon gross output was suggested by Mr. F. C. Le Marchant, a Member of the India Council, who was consulted by the Secretary of State for India at the instance of the Government of India. I request reference to Mr. Marchant's letter dated 29th June 1901. The expressions used by Mr. Marchant in his letter in referring to the amount on which the extra royalty should be calculated are the following:-

1. "Larger share of profits."
2. "2½ per cent on dividends".
3. "All the profits would substantially come under contribution."
4. "The earnings avaiable for dividend."

5. "A royalty of 2½ per cent upon the amounts available for dividend.

6. "Sums available for dividend including in this all incomep on capital of the Company whether raised by deventures or shares."

Mr. Marchant distinctly referred to profits and where he used the expression 'dividend' he did not qualify it in any way. There can be no doubt that what he intended and recommended was that the extra royalty should be calculated upon the entire sum available for distribution as dividends.

Proposal of Mr. Mark Napier.

5. The proposal to calculate the extra royalty on dividends as and when declared was that of Mr. Mark Napier. (Vide his letter dated 11th December 1901 to the Dewan). Neither in this letter nor in his other letters in the file is there any allusion to the diversion of any share of the profits for purposes other than for payment of dividends. On the other hand, the arguments advanced by him in his letter dated 17th December 1901 to the Dewan to show that if the sliding scale of requiring a larger per cent of royalty in the case of Mines making an annual profit of more than 50 per cent of their capital was adopted, it would place the Companies under a temptation to raise the Capital to reduce the amount payable to the State and that such action on the part of Companies would lead to suspicion and complaint and possibly also litigation, clearly indicated that the intention was not to deprive Government of their full

share

share of the extra royalty to be calculated upon the dividends which obviously were understood to be the whole profits. The practice now adopted by the Companies, however, leads to the very result which Mr. Napier stated would make the relations between the lessors and the lessees unpleasant and which he added may even land them in litigation. The device mentioned in his letter was that of increasing Capital to deprive Government of their share of royalty. The case that has now occurred is that of refraining from adding to the Capital with the result that Government are deprived of their full share of extra royalty based upon dividends.

Mr. Napier accepted the principles of Mr. Marchant.

6. In confirmation of the view that it was not the intention to permit any reduction of profits, for purposes of calculation of the extra royalty payable to Government, may be noted the fact that Mr. Napier accepted the principles enunciated by Mr. Marchant. (Vide the penultimate paragraph of his letter dated 17th December 1901 to the Dewan.). That it was Mr. Marchant's intention to calculate the extra royalty on the total profits is evident from what I have stated in para 4 supra. As Mr. Napier accepted the principles upon which Mr. Marchant's recommendations were based, the only natural inference is that it was not als the intention of Mr. Napier to deprive Government of royalty on the share of profits diverted for any other purpose.

View of the Government of India.

I would invite reference in this connection to para 2 of the Residency letter of 27th March 1902. The Government of India also recognised that the agreement arrived at in 1901 was based on Mr. Le Marchant's scheme. The calculation of the extra royalty on any amount less than that proposed by Mr. Marchant cannot therefore be contended to be in accordance with the intention of the arrangement recommended by those who advised its adoption and accepted by the parties to the agreement.

Intention of Agreement of December 1901.

7. The interpretation of the expression "dividends as and when declared" was discussed when the form of the new Lease was considered in 1908 and 1909. I request reference to Dr. Smeeth's note dated 7th August 1908 and his letter to Messrs. John Taylor & Sons dated 4th March 1909. The intention of the memorandum of 1901 in respect of increased royalty was clearly stated in para 10 of this letter which ran as follows:-

Interpretation of clause 9 communicated to Messrs. John Taylor & Sons.

"It was unquestionably the intention of the memo of agreement of December 1901 that the extra royalty should be 2½ per cent of the profits; but to avoid discussion and difficulty in the exact determination of profits, it was decided to adopt the basis of dividends instead, it being considered at the time that the difference between the two would not be material."

In view of this intention, clause 9 of the Lease as it had been drafted by

the Company was proposed to be amended by qualifying the word "dividends" by the addition of "from what-ever source derived". The object of this amendment was to reserve to Government the right to claim the share of royalty on the income from other investments made out of mining profits. (Please see para 11 of the same letter.). This amendment was reasonable and in accordance with the intention of the agreement of 1901 aa stated in Dr. Smeeth's letter and it was therefore readily accepted by the Companies. The correspondence with the Company settled only this question of the right of Government to have their extra royalty calculated upon all dividends from whatever source derived. But the far more important question of their right to royalty on the share of profits utilised for improvement and development of the mines though raised in Dr. Smeeth's note dated 7th December 1908, does not appear to have been pursued and there is no reference to it in the letter addressed to Messrs. John Taylor & Sons. Broadly the diversion of profits can be for two purposes:- (1) for development of the Mines themselves and (2) for acquiring interests in other properties. The right of Government to their share of income from any new interest built out of the diverted profits was urged by us and conceded by the Companies because, otherwise Government had a right to claim 2½ per cent

Question though raised not pursued in 1909.

cent on the amount diverted for acquiring the new interest. The position in respect of the share of profits diverted for the development of the mines themselves is not different, in so far as the right of Government to royalty on the share thus diverted for meeting capital requirements is concerned. There is, however, one point of difference between these two cases but it is in favor of Government as it shows that the right of Government to royalty on profits used for development is even stronger than in the other case. Development of mines is not a case of acquisition of a new interest with which Government have otherwise no concern. It is that of working the property leased to the Companies. Royalty claimed by Government is for having allowed the mine to be worked and no share of the cost of working the mines or of developing ~~them~~ it can be thrown on Government. The royalty to which Government have a right should be subject to no charge whatever, direct or indirect, but the procedure under which the Companies divert a portion of the profits for development and deny to Government the royalty on such share throws on Government a part of the burden of expenditure which must wholly be borne by the Companies themselves. This is inconsistent with the nature of the Lease - Clause 2 - and of the intention of the Memorandum of Agreement of 1901 as interpreted in Dr. Smeeth's letter to Messrs. John Taylor & sons.

Present practice not in accordance with intention of Lease or its interpretation communicated to Messrs. John Taylor & Sons.

Amount of profit diverted for other purposes.

For the years 1910-1917.

Name of Company.	Profits.	Amounts not paid as dividends.
Kysore Gold Mining Co.,	£3,813,400	717,313
Mundydroog Gold Mining Co.,	1,245,729	277,046
Doregum ,,	1,317,427	132,363
Champion Reefs. ,,	1,523,372	314,344

It was made quite clear to the Companies in Dr. Smeeth's letter of 4th March 1909 that for the purpose of calculation of additional royalty, the basis of dividends was adopted on the assumption that the difference between profits and dividends would not be material. I note in the margin below the profits and the portions thereof not paid as dividends but diverted for other purposes. It will be seen how material is the difference between profits and dividends.

Arguments that profits used for Capital are in the interests of Government examined.

8. It might possibly be argued that the diversion of profits for adding to the equipment and consequently the Capital value of the concerns is also in the interests of Government who stand to gain in the resulting expansion of work and in the increased output of gold. This argument appears plausible but is unsound. The right of Government to their share of profits made by the Companies is not based upon any investment t be made by them. All investments for workin the mines should be by the Companies and Government should get their royalty from the earnings of all investments made by the Companies themselves. The procedure now adopted by the Companies indirectly compels Government to make a part of the investment while they are under no obligation to do so. This argument is, I think, conclusive for establishing the right of Government to the extra royalty calculated upon the amount of profits including the share diverted for development purposes.

No objection to use part of profits for development but royalty on such part also should be paid.

9. From the purely business point of view, there can be no objection to the policy of shareholders who choose to forego an immediate income in the form of larger dividends with the deliberate object of improving their property, of ensuring a higher value for their shares and also possibly of higher returns in the future. But the share of profits diverted for development purposes and not distributed as dividends would still stand to the credit of the shareholders, while it would adversely affect the interests of Government. Government are not the part owners of the property of the Company to share in its enhanced value due to the improvements and extensions effected at the expense of revenue. The procedure adopted by the Companies, while it not only does not injure the shareholders but even strengthens their position, involves a positive loss to Government. As for any prospective advantages to Government in the shape of additional royalty from increased profits due to developments at the expense of profits, I have already stated - para 8 supra - that Government are entitled to such advantage without being called upon to make any investment from their royalty.

Nature of concern and need for strictly interpreting the clause about royalty on dividend.

10. A general consideration relevant to the question under discussion may also be urged. I refer to the nature of the Mining Industry and the necessity to effectively safeguard the interests of the proprietor of a mine who allows his property

to be worked and exhausted altogether. Mining Industry is a highly speculative concern and the proprietor's right to the largest share of what is actually earned as profits is only too fair to be disputed. As regards the nature of the concern and the interest which in view of it the proprietor should have in the profits of working, I reproduce a paragraph from Dr. Smeeth's note dated 15th December 1901.

"Work under such concessions involved the removal, once and for all, of materials which represent potential assets of the State and not the development of an abiding industry. Such industry as may be developed under such concessions can only be carried by the removal of more and more of the material worked, the total amount of which is limited and with no possibility of replenishment. The question for the Government to determine is what are the terms which can be imposed so as to secure the largest return to the State."

11. Government have permitted their mines to be worked by the Companies and stipulated for a share of profits as royalty. The condition in the contract about this stipulation should, I think, be construed strictly keeping in view the nature of the concern which is temporary and which, by each year's working, removes once and for all the most valuable material asset of the State, namely, gold. When a Company makes a profit, which enables it not only to declare a handsome dividend to its shareholders,

shareholders, but also to set apart a large share of it for purposes of developing the industry the right of the proprietor of the mines to get his full share of royalty calculated on the whole of such profit, seems to be too just to be disputed by the Companies.

Argument of risk taken by shareholders examined.

12. It may be argued that when shareholders divert a share of the profits for developing a speculative industry like mining, they are running risks and should their anticipations fail, they stand to lose. But they are the masters and if they decide to venture on speculative investments, they choose to run risks. The landlord, however, has no voice in the management of the concern and he cannot be expected to take any risks. If the shareholders lose by any speculative investment due to their miscalculations, it is unfair to make the landlord share in the penalty.

Lessors have no right to property built out of diverted profits.

13. The share of profits diverted for purposes of development should in fairness be considered as consisting of the contribution of not only the shareholders but also of the landlord whose royalty was reduced for effecting such development. But the contract does not contemplate any circumstances in which the lessors have a right to part ownership of the properties of the lessees. It is not also practicable to permit to the landlord any such interest in the property. That the diversion is partly at his expense cannot however be disputed. To prevent the

anomaly

anomaly of placing the landlord in a position which gives him the right of claiming part ownership of the property, the remedy is to discharge his claim in respect of royalty on profits as they are made and utilise for purposes of development only the contribution of the shareholders which they chooose to forego for increasing the value of the property.

Provision in Lease for purchase of Lessee's property by Lessors also supports the view taken in this note.

14. On the termination of the Lease, there is provision in the Agreement -clause 28 - for the Lessor's purchasing the properties of the lessees. The lessees would certainly include in the price of the properties claimed by them the amount spent out of profits. It cannot certainly be contended that the whole of this amount was contributed by the shareholders alone. It would be unfair to require the lessors to pay the full price for a property partly built at their own expense. This view of the case also proves the right of Government to royalty on profits without any reduction.

Balance Sheet under the procedure followed by Companies not complete.

15. The capital character of the expenditure incurred for purposes of development though met from revenue cannot be denied. The value of the properties of the Companies is increased by such expenditure and although it does not appear on the balance sheet, the property built out of it cannot help being shown on the books of the Companies. The assets built out of such expenditure are there though they are not shown as part of the debtor

balance.

balances of the accounts on the ledger. The practice followed by the Companies leads therefore to a departure from the usual procedure of accounts under which all items of liabilities and assets should regularly appear in the balance sheets. As it should be obligatory on the Companie to find all the capital required for working the mines, they cannot, if they divert a part of their profits for meeting capital charges, deny the capital character of the outlay met from this source nor refuse to allow to the lessors the royalty on profits without diversion of any part of it for other purposes. Considered from the purely account point of view, the procedure followed by the Companies leads to their balance sheets being incomplete as they do not regularly bring out the real assets and liabilities and such procedure cannot be allowed to adversely affect the interest of the proprietor of the mines.

One party cannot decide disposal of profits.

16. The Lease gives Government the right to claim as royalty a share of the profits and I do not think it can be contended that it should be left entirely to the option of the Companies to decide what is the amount on which this royalty should be calculated and paid. There is no definition, agreed to by both the parties, of the expression 'dividends as and when declared' in the Lease. In the absence of such definition included in the contract,

contract, the interpretation should be fair to all the interests concerned and before any interpretation can be acted upon, it should be supported by the consent of both the parties. According to the present procedure, the amount on which the extra royalty of 2½% is to be allowed is left entirely for decision by only one party and this arrangement cannot be fair. Though there is no definition of the expression in the Lease itself, the negotiations which resulted in the Lease leave no room for doubting what was the intention of both the parties. In view of this, the action of the Companies in diverting a share of the profits for development purposes and denying to Government the royalty on such share is, I think, unauthorised.

Diversion of profits for other purposes.

There are also the following items met from profits on which we do not receive the additional royalty of 2½ per cent:

1. Contributions to Reserve and other Funds.

2. Donations for various purposes.

For reasons similar to those urged in regard to the share of profits used for capital purposes, I think the royalty of 2½ per cent is payable on these items also.

Amount of Revenue involved in the question raised.

I invite reference to the appended statement which shows the royalty calculated upon the share of profits utilised for other purposed from 1910. The amount already due is about 5 lakhs and this I consider has unjustifiably been withheld from us. The average annual loss works up to about

Rs.60,000. At this rate, the total loss for the whole period of the Lease would amount to about 18 lakhs.

Correspondence with Companies suggested for changing present procedure.

I consider that the exclusion of a share or the profits in the calculation of the extra royalty of 2½ per cent is unfair and unauthorised, judged by the only interpretation that can, in the light of previous negotiations and of general considerations of equity, be placed upon clause 9 of the Lease. The magnitude of the financial interest involved is very large and it is necessary to take up the matter with the Companies and convince them of the untenability of the procedure now followed by them and of their obligation to pay the extra royalty on the profits including the amounts diverted for capital expenditure for reserve and other funds and for donations for various purposes for the whole period of the new Leases from March 1910

M.N. Venkata Rao

Comptroller. 15/4/19

Statement showing the Shares profits not paid as divide

(new lease Case

Name of Co.	The Mysore Gold mining Co of India Ltd.						The Nundydroo	
Years.	Profits.	Shares Profits not paid as dividends.				2½% to Calculate actual Total £.	Profits.	Share
		Capital Expenditure	Contribution to Reserve or other Fds	Donations	Total.			Capita Expend
	£	£.	£	£	£.		£	£
1910.	4,97,359.	73525	40,000	-	113,525	(a) 2128-11-11	165,596	1235
1911	4,94,796	44344	40,000	-	84,344	2108-12-0	180786	14,47
1912	5,13,846	37,005	25,000	-	62,005	1550-2-6	172,969	12,75
1913	490,269	65,064	25,000	-	90,064	2251-12-6	144,533	30,05
1914	488,859	84,979	-	3045	88024	2200-12-0	141,801	29,82
1915	473,443	80,407	-	336	80,743	2018-11-6	143,896	37,69
1916	4,50,533	98,024	-	321	98345	2458-12-6	154,570	38,63
1917	404,296.	100,137	-	126	100,263	2506-11-6	141,558.	37,50
1918	-	-	-	-	-	-	-	-
Total.	£ 38,13,400	£ 583,485	£ 130,000.	£ 3828	£ 717,313.	17223-5-11	£ 1245,729	£ 213,29

(a) Calculation of 2½% royalty for the year 1910 ~~calculated~~ made and on 3/4

G. R. S. V1—G/32]

SUBJECT.....

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Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT

( )

, the 191 .

Date of issue 23/4/09

Signed by [illegible]

Section Geol

File No. 106-18

Serial No. 2

No. 27074

To The Director, Dept of Mines & Geology

Sir,

I am directed to request that (1) file of papers containing memos and notes regarding the rate and mode of levying royalty on gold produced by the Kolar Companies which finally resulted in the memorandum of Agreement of 21st December 1901 and (2) file no 218 A of 1903-04 ending with correspondence* leading to Govt Order no 1724-6 Dy 5-2-1910 may kindly be forwarded for reference at an early

over.

P.T.O.

early date. They will be returned
when [illegible] done with
I have the
[illegible]
[illegible]
[illegible]

enclosures.

Copied by

Examined by

W D86—GPB—60,000—15-11-16

18444

68578

62

D.M.G 17] GPB—1,000—23-3-15

FROM

DR. W. F. SMEETH, M.A., D.Sc., A.R.S.M., &c.
Director, Dept. of Mines and Geology,
Mysore State.

To
C.S.Balasundaram Iyer, Esq.,
B.A.,
Chief Secretary to the Govt
of H.H.the Maharaja of
Mysore.

DatedBangalore, 2nd May 1919.

Despatched

Received

CHIEF SECRETARIAT
MINOR Depts.
3 MAY 1919

General No. 3249

Enclosure No. 2 files.

Sir,

In compliance with your letter No.G.24374/Geol.106-18-2, dated 23rd April 1919, I have the honour to forward herewith (1) file of papers containing Memos and notes regarding the rate and mode of levying royalty on gold produced by the Kolar Companies which finally resulted in the Memorandum of Agreement of 21st December 1901 and (2) file No.218 B of 1903-04 ending with correspondence leading to Government Orders No.1724-6, dated 5th February 1910, and to reques

the

the favour of their return to this office when done with.

I have the honour to be,

Sir,

Your most obedient servant,

A. R. Sutton

Director,

Dept. of Mines & Geology.

J.H.

G.R.S. VI

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, *the* 191

Date of issue 20/7 C

Signed by M^r Dcg

May this be

i Printed ? P.O.B.

ii treated as a standing order ?

iii published in the Gazette, English Part ?

iv translated ?

v placed at the disposal of the press ?

vi published in the Gazette, Kannada Part ?

Section Genl

File No. 106-18

Serial No. 4

Proceedings of the Government of His Highness the Maharaja of **Mysore.**

Read—

"Govt order no Cy 6087-92/G.M. 387-14-8 dated 23rd September 1918 directing that—the Coolegum & the Kundydroog Gold Mining Companies might be permitted to remove the tailings in the Sonnakuppam Tank on certain conditions, one of which is to the effect that a royalty of 2½ % should be paid on "Profits or dividends."

2. Letter no KK 2935 dated 15th April 1919 from the comptroller to Govt, stating (1) that the two terms "profits" or "dividends" occurring in the Govt order of 23rd September 1918 referred to above were assumed to mean (one and) the same thing but as a matter of fact they do not; that the Coolegum & the Kundydroog Mining Cos appropriate a part of their profits for purposes of capital expenditure & permit only a part of their profits to be declared &

dividends; and (2) that, with regard to clause 9 of the leases held by the Kolar Gold Mining Companies, the accounts of the companies show that large amounts out of the profit & loss accounts are to be written off for capital expenditure on buildings, machinery & plant & that by the calculation of 2½% royalty, as at present made, on dividends instead of on the profits, Govt are losing a considerable amount every year, the total loss to far being calculated at 18 lakhs; and urging, in reasons given, that the basis of calculation should be in the case of the leases ("profits" be and not "dividends" & requesting specific orders as to whether the 2½% royalty required in G.O. of 23-9-18 should be made clear is to be calculated on "profits" or on "dividends."

3. Note dated 7th July 1919 from the Director, Dept of Mines & Geology in the matter pages 5 - 10 of the record.

Order no. G 1446-8 Revenue

Govt observe that the words used in the leases are perfectly clear & explicit and there is no need to go to the negotiations for interpreting them.

2. In this connection, Mr Sweet has raised the question of the royalty due to Govt on the profits of the Mining companies from any investment in or outside the State out of the profits of the mines in the State.

3. After a careful consideration of all aspects of the case, Govt are pleased to direct that in regard to the royalty on tailings referred to in the Govt order of September 1918, the royalty shall be 2½% on dividends instead of on profits;

2. They are further pleased to approve of the proposal made by Mr Sweet in paragraphs 19 to 23 of his Note read above

List of enclosures.

H

Copied by

Examined by

WD 1744—GPB—30,000—17-3-19

G. R. S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

regarding the levy of a royalty on profits realised by Mining Companies in Mysore from investments made by them in or outside the State out of the profits of the Mines in the State. The Director, Department of Geology, is requested to make enquiries in regard to such investments and submit a detailed report to Government at an early date.

3. No further action ~~appears~~ is called for at present in regard to the other points raised in the Comptroller's Note read above

CSR 1577.
2CS Chief Secy to Govt
12/7/20.

To

The Comptroller to Govt

The Director of Mines & Geology

The Director, Dept of Geology & with Records

Copy to the Financial Sec^y.

GPB—12,000—15-2-13.